

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.2363 of 2009

Reserved on: 07.09.2009.

Date of decision: 9.12.2009

Centre of India Trade Unions

...*Petitioner*

Versus

Union of India and others

...*Respondents.*

Coram

The Hon'ble Mr. Justice Deepak Gupta, J.

The Hon'ble Mr. Justice V.K.Ahuja, J.

Whether approved for reporting?¹ Yes.

For the petitioner : Mr. Rajneesh Maniktala, Advocate.

For the respondent No.1.: Mr. Janesh Mahajan, Central Govt. Counsel.

For the respondent No.2 and 3: Mr. Rajesh Mandhotra and Mr. Vikas Rathore,
Deputy Advocate General.

For the respondents No.4 to 7 Mr. R.K.Sharma, Advocate.

Per Deepak Gupta, J.

By means of this writ petition, the petitioner has prayed for the grant of the following amongst other reliefs:-

1. That the appointment of Respondent No.4 as Chairman, Himachal Pradesh Building and Other Construction Workers' Welfare Board may be quashed and set aside being contrary to the provisions of Section 18 of the Building and Other Construction Workers' (regulation of employment and conditions of services) Act, 1996.
2. That the appointment of Respondent No. 5 to 8 as Members of Himachal Pradesh Building and other Construction Workers' Welfare Board, may be quashed and set aside being contrary to the provisions of Section-18 of the Act.
3. That Rule-251(1)(i) of Himachal Pradesh Building and Other Construction Workers' Welfare Rules 2008 may also be quashed

¹ ***Whether the reporters of the local papers may be allowed to see the Judgment? Yes.***

and set aside being ultra vires to section 18 of Building and Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

4. That respondent No.2 may be directed to follow criteria while appointing representatives of building workers on Himachal Pradesh Building and Other Construction Workers' Welfare Board giving representation to wider sections of building workers.

Briefly stated the relevant facts are that the Union of India enacted the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, which received the assent of the President of India on 18.8.1996. This act is deemed to have come into force w.e.f. 1st day of March, 1996. The provisions of this act apply to every establishment which employs 10 or more building workers in any building or any construction work. The object of the promulgation of this act was to regulate employment and conditions of service of workers belonging to the unorganized sector engaged in construction activities.

Section 4 of the Act provides that every State Government shall constitute a Committee to be called the State Building and Other Construction Workers' Advisory Committee. The purpose of this Committee is to advise the State Government on matters arising out of the administration of this Act.

Section 7 of the Act requires that every employer in relation to an establishment to which the Act applies shall within 15 days from the commencement of the Act apply for a registration of such employer to the registering officer.

Section 10 of the Act prohibits an employer from employing any building worker in an establishment in case it is not registered.

Similarly, Section 12 of the Act provides that every building worker between the ages of 18 and 60 years engaged in such work for at least 90 days during the preceding twelve months shall be eligible for registration as a beneficiary under the Act.

Section 13 provides that the Board shall give to every beneficiary under the Act an identity card with his photograph and space for entering the details of building and other construction work done by him. Register of beneficiaries is required to be maintained under Section 15. A building worker who is registered as a beneficiary is required to make a contribution to the fund established under the Act as per the monthly rate prescribed by the State Government.

Section 18 of the Act provides that every State Government shall constitute a Board to be known as the State Building and other Construction Workers' Welfare Board. The functions of the Board are enumerated in Section 22. The Board has very vast powers including the power to provide immediate assistance to the beneficiary in case of an accident, make payment of pension to the beneficiary, etc. The Board under Section 24 is required to constitute a fund to be called the Building and other Construction Workers' Welfare Fund.

The State Government vide the impugned notification dated 2nd March, 2009 has constituted the H.P. Construction and other Construction Workers' Welfare Board. Respondent No.4 was appointed Chairperson of the Board and respondents No.5 to 9

were appointed members of the Board being the representatives of the building workers. The petitioner has challenged the appointment of these persons on the ground that they are not eligible to be appointed as Members of the Board. In respect of respondent No.4, the main ground raised on behalf of the petitioner is that the chairman must be appointed by the Central Government and in respect of respondents No. 5 to 8 the objection is that they are not the representatives of the employees.

To appreciate the contention of the petitioner, it would be appropriate to quote Section 18, 22 and 24 of the Act which read thus:

18. Constitution of State Welfare Boards.

(1) Every State Government shall, with effect from such date as it may, by notification, appoint, constitute a Board to be known as the(name of the State) Building and Other Construction Workers' Welfare Board to exercise the powers conferred on, and perform the functions assigned to, it under this Act.

(2) The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal and shall by the said name sue and be sued.

(3) The Board shall consist of a chairperson, a person to be nominated by the Central Government and such number of other members, not exceeding fifteen, as may be appointed to it by the State Government:

Provided that the Board shall include an equal number of members representing the State Government, the employers, the building workers, and that at least one member of the Board shall be a woman.

(4) The terms and conditions of appointment and the salaries and other allowances payable to the chairperson and the other members of the Board, and the manner of filling of casual vacancies of the members of the Board, shall be such as may be prescribed.

22. Functions of the Boards.

(1) The Board may—

(a) Provide immediate assistance to a beneficiary in case of accident;

(b) Make payment of pension to the beneficiaries who have completed the age of sixty years;

- (c) Sanction loans and advances to a beneficiary for construction of a house not exceeding such amount and on such terms and conditions as may be prescribed;
- (d) Pay such amount in connection with premia for Group Insurance Scheme of the beneficiaries as it may deem fit;
- (e) Give such financial assistance for the education of children of the beneficiaries as may be prescribed;
- (f) Meet such medical expenses for treatment of major ailments of a beneficiary or, such dependant, as may be prescribed;
- (g) Make payment of maternity benefit to the female beneficiaries; and
- (h) Make provision and improvement of such other welfare measures and facilities as may be prescribed.

(2) The Board may grant loan or subsidy to a local authority or an employer in aid of any scheme approved by the State Government for the purpose connected with the welfare of building workers in any establishment.

(3) The Board may pay annually grants-in-aid to a local authority or to an employer who provides to the satisfaction of the Board welfare measures and facilities of the standard specified by the Board for the benefit of the building workers and the members of their family, so, however, that the amount payable as grants-in-aid to any local authority or employer shall not exceed—

(a) The amount spent in providing welfare measures and facilities as determined by the State Government or any person specified by it in this behalf, or

(b) Such amount as may be prescribed,

Whichever is less:

Provided that no grant-in-aid shall be payable in respect of any such welfare measures and facilities where the amount spent thereon determined as aforesaid is less than the amount prescribed in this behalf.

24. Building and Other Construction Workers' Welfare Fund and its application.

(1) There shall be constituted by a Board a fund to be called the Building and other Construction Workers' Welfare Fund and there shall be credited thereto—

- (a) Any grants and loans made to the Board by the Central Government under section 23;
- (b) All contributions made by the beneficiaries;
- (c) All sums received by the Board from such other sources as may be decided by the Central Government.

- (2) The Fund shall be applied for meeting—
 - (a) Expenses of the Board in the discharge of its functions under section 22; and
 - (b) Salaries, allowances and other remuneration of the members, officers and other employees of the Board;
 - (c) Expenses on objects and for purposes authorised by this Act.
- (3) No Board shall, in any financial year, incur expenses towards salaries, allowances and other remuneration to its members, officers and other employees and for meeting the other administrative expenses exceeding five per cent. of its total expenses during that financial year. “

At the outset, I may state that the Act in question is a very important piece of Social Welfare Legislation. The statement of objects and reasons of this Act clearly shows that the legislature was aware that there were millions of workers in this country engaged in building and construction work. They are in the unorganized sector and there is no one to look after their interests. It was also found that the work is casual in nature with a temporary relation between the employer and employee. Therefore, it was considered necessary to constitute Welfare Boards in every State so as to provide and monitor social security schemes and welfare measures. The fund has been created under the Act. Contributions to the funds are received from various sources including the beneficiary employees themselves. This act also provides that an employer registered under the Act must maintain proper registers giving the hours of work, hours of rest and the wages paid by him to the various employees. An employer is also required to provide clean drinking water, toilets, urinals canteens, first aid facility and other facilities to the employees.

In so far as respondent No.4 is concerned, the main contention raised by Shri Rajneesh Maniktala, learned counsel for

the petitioner is that the Chairman must be appointed by the Central Government. In the alternative it is submitted that his appointment must be in consultation with the Central Government. Reliance has been placed by the learned counsel for the petitioner on the language of sub-section 3 of Section 18 of the Act. Shri Maniktala, learned counsel for the petitioner urges that the Chairperson as well as the nominee of the Central Government must both be nominated by the Central Government and it is only the other 15 members who can be nominated by the State.

Reliance placed by Shri Maniktala on a judgement rendered by the Apex Court in **The siemens engineering and Manufacturing company of India Ltd. vs. Union of India, (1976) 2 SCC 981** is totally misplaced. The question before the Apex Court in that case was as to whether the words "not otherwise specified" qualify the words "component parts" or not. The Apex Court held that as a matter both of grammar and language the words "not otherwise specified" could not qualify "component parts". The Court held that the sentence would become ungrammatical if the words "not otherwise specified" were read to govern "component parts". This decision does not lay-down any law of interpretation but interprets a particular provision by the language used.

Shri Maniktala, learned counsel for the petitioner also relied upon the judgement of the Apex Court in **Hiten P. Dalal vs. Bratindranath Banerjee, (2001) 6 SCC 16**. The Apex Court was interpreting the provision of Section 6, 7 of Section 3(2) of the Special Court (Trial of Offences Relating to Transactions in

Securities) Act, 1992. Relevant portion of the provision reads as follows:-

“3.(2) ... any offence relating to transactions in securities after the 1st day of April, 1991 and on and before 6th June, 1992....”

The Apex Court in paras 7,8, 9 and 10 held as follows:

“7. The question is - does the period specified qualify the word "offence " or the word "transactions"? If it is the former, the jurisdiction of the Special Court would be, as contended by the appellant, limited to offences committed within the period specified whenever the transactions may have taken place. The respondent has however contended that the period qualifies the word 'transactions' and that this was not only clear from the language of the statutory provisions but also supported by authority.

8. In our view the respondent's submission is correct and must be accepted. The Statement of Objects and Reasons of the Act gives the background and the focus of the Act as :

"large scale irregularities and malpractices were noticed in transactions in both the Government and other securities, indulged in by some brokers in collusion with the employees of various banks and financial institutions."

9. The preamble to the Act also makes it clear that the purpose of the enactment was to deal with those particular transactions in securities. In sub-section (2) of Section 3 the statutory period occurs after the word transaction. If the period were to qualify the word 'offence' the section would have read "any offence after the 1st day of April and on or before 6th June, 1992". From the language used it is apparent that the period relates to the transaction in securities and that the date of the offence is immaterial. Other sections of the Act also show that the object of the Act is those particular transactions which were carried out during a particular period of time. Thus Section 4 of the Act allows the Custodian, under certain circumstances to cancel "any contract or agreement entered into at any time after the first day of April 1991 and on or before the 6th June of 1992." The position has been further clarified by Section 9-A(1)(b) (introduced by way of amendment in 1994) which confers on the Special Court all the jurisdiction, powers and authority as were exercisable immediately before the commencement of the

amended Act by any Civil Court in relation to inter alia, any matter or claim -

"arising out of transactions in securities entered into after the 1st day of April 1991, and on or before the 6th day of June, 1992, in which a person notified under sub-section (2) of Section 3 is involved as a party, broker, intermediary or in any other manner."

10. In these circumstances the inevitable conclusion is that the ambit of the Special Courts jurisdiction, whether in criminal proceedings or in civil disputes is in respect of the transactions in securities entered into after the 1st day of April, 1991 and on or before 6th day of June, 1992."

Again we find that the Apex Court has interpreted the language of the Section and no legal preposition as to interpretation has been laid down which could help the petitioner.

When the language of the Section is clear it is not necessary to fall back on any other principle of statutory interpretation. The language of the Act of the provision has to be interpreted in grammatical terms. In the present case Section 18(1) provides that every State Government shall constitute the Board. It is thus clear that the State Government enjoys the power to constitute the Board. Sub-section 3 of Section 18 provides that the Board shall consist of a chairperson, a person to be nominated by the Central Government and such number of other members not exceeding 15 as may be appointed to it by the State Government. The contention of the petitioner is that the word Central Government has to be read both with the words Chairperson as well as with the phrase "a person to be nominated". This in our view is not the correct position at all. The sub-section in question consists of three parts. It deals firstly with the Chairperson; secondly it deals with a nominee of the Central Government and thirdly with other

members not exceeding 15. If the language of the Section is read in its context it is clear that the Chairperson has to be appointed by the State Government and not by the Central Government. The Board has to be constituted by the State Government and obviously the chairperson has also to be appointed by the State Government. It is only the nominee of the Central Government who should be appointed by the Central Government. In case the intention of the legislature was different then it could have easily provided that the Board shall consist of a Chairperson and a person to be nominated by the Central Government. By using a comma after the word Chairperson it is apparent that the nominee of the Central Government is totally different from the Chairperson of the Board. The proviso to this sub-section provides that the Board shall include an equal number of members representing the State Government, the employers and the building workers. It is, therefore, obvious that if a 15 member board is constituted; five should be representatives of the State Government, 5 should represent the employers and five should represent the building workers. However, as far as the Chairperson is concerned he or she has to be appointed by the State Government. This is the only interpretation which the section admits.

In so far respondent Nos. 5 to 8 are concerned, the allegation of the petitioner is that the respondent-State has nominated the said respondents as members of the Board showing them to be the representatives of the employees i.e. the building workers. According to the petitioner respondent No.5 is not a building worker but is the General Secretary of the BJP Mandal

Jawalamukhi. It was also alleged that he is a contractor and therefore cannot be treated to be a representative of the building workers. In respect of respondent No.6 the allegation was that he is not a construction worker but is in fact an Ex-MLA from Nagrota Bagwan and he belongs to the BJP. He is also not a construction worker or representative of the construction workers. In respect of respondent No.7 the allegation was that he is a contractor and cannot be considered a building worker. In respect of respondent No.8 it was alleged that she is the President of the Mahila Morcha-BJP, Tehsil Amb, District Una, and not a construction worker.

After arguments were heard in the matter the State filed CMP No.7164 of 2009 whereby it withdrew the earlier notification, in so far as respondents No. 5 to 8 are concerned. The nomination of respondents No. 5 to 8 has been withdrawn and some other persons have been appointed in their place. Therefore, the petition qua respondents No. 5 to 8 has become infructuous. It is, however, made clear that the petitioner shall be at liberty to challenge the appointment of the members now appointed in case the petitioner is aggrieved by their appointment.

In view of the above discussion the writ petition is dismissed in so far as respondent No.4 is concerned. As far as respondents No.5 to 8 are concerned the writ petition has become infructuous as held by us above. No costs.

(Deepak Gupta), J.

9th December, 2009
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(V.K.Ahuja), J.